PM2.5/Clean Air Act: U.S. Court of Appeals Sets Schedule for EPA Nonattainment Designations



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The United States District Court for the Northern District of California ("District Court") in a July 17th Order issued a schedule for the United States Environmental Protection Agency ("EPA") to issue PM2.5 nonattainment designations. *See ALLIANCE OF NURSES FOR HEALTHY ENVIRONMENTS, et al., v. LEE MICHAEL ZELDIN*, Case No. 26-cv-03118-HSG.

The Order requires that EPA identify air quality control regions by February 6, 2020, that are in violation of the PM2.5 Clean Air Act National Ambient Air Quality Standards ("NAAQS").

The D.C. Circuit Court of Appeals in a June 26th Opinion had rejected EPA's Motion to Vacate the Biden EPA rule that established a strengthened PM2.5 NAAQS.

EPA subsequent to the Appellate Court's upholding the Biden-era PM2.5 NAAQS informed the District Court that it might seek permission to appeal the Appellate Court decision:

… which might result in a decision that moots this case months or years from now…

As a result, EPA argued for holding the case in abeyance in terms of designating PM2.5 nonattainment of air quality control regions. The agency further argued that:

1. Plaintiff environmental groups lack standing;
2. Court should decline jurisdiction under the prudential ripeness doctrine; and,
3. Plaintiff environmental groups' proposed remedies are infeasible and impossible.

The District Court held that the Plaintiffs demonstrated a fair possibility of real harms from delaying the proceedings. Further, it held EPA had not presented a clear case for hardship or inequity for being required to move forward now that the Appellate Court had issued its Opinion. As a result, the District Court declined to exercise jurisdiction to hold the matter in abeyance.

The Court held in part that it requires:

… Defendant to promulgate final designations for all areas of the country no later than February 6, 2027

A copy of the Opinion can be found here.